



February 17, 2004

Tina M. Pidgeon
(202) 457-8812
tpidgeon@gci.com

EX PARTE – VIA ELECTRONIC FILING

The Honorable Kathleen Abernathy, Federal Chair
The Honorable Nan Thompson, State Chair
The Honorable Jonathan Adelstein
The Honorable Thomas Dunleavy
The Honorable Billy Jack Gregg
The Honorable Lila Jaber
The Honorable Kevin Martin
The Honorable Bob Rowe
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: CC Docket 96-45

Dear Members of the Federal-State Joint Board on Universal Service:

General Communication, Inc. (“GCI”) is a wireline competitive local exchange carrier, providing services in both non-rural (Anchorage) and rural (Fairbanks and Juneau) service areas in Alaska. GCI also is a competitive eligible telecommunications carrier in each of its local service areas. Consumers in these areas benefit from the ability to exercise choice in local providers: they experience more innovative service offerings at better prices. Consistent with its presentations throughout this proceeding, GCI strongly urges the Joint Board to ensure that any of the reforms adopted in connection with ETC designation, portability, and the basis for support be competitively neutral. Specifically, any reform that excludes competitive carriers from ETC eligibility based on arbitrary benchmarks, and fails to take into account those mechanisms already available to incumbents to protect against “cherry-picking” consumers in lower cost areas, will raise a barrier to entry that will deny consumers—particularly in rural areas—the benefits of competition.

GCI is very concerned about any benchmark proposal that would limit the number of ETCs for a given study area based on the per line high cost support for that area.¹ First,

¹ See, e.g., Remarks of Commissioner Adelstein, OPASTCO’s 41st Annual Winter Convention, (“Securing Rural Telecommunications in a Changing World”) (Jan. 19, 2004) (describing proposal for “tiered” presumptions against ETC designations, based on per-line high cost support) http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-243695A1.pdf.

establishing presumptions against CETC designations effectively eliminates the best incentive for ILECs to reduce the costs being subsidized. A limitation on CETC designations picks a “winner”—the incumbent—and precludes the very effects of competition that would otherwise be available to *discipline* the costs in higher cost areas. In this way, the benchmark proposal would allow the perpetuation of unchecked ILEC costs that has been the primary source of growth in high-cost support to rural areas. As explained by Dr. David Sappington, there may be short-term increases in funding with multiple ETC designations, but in the long run, the least-cost, most efficient carrier will prevail, permitting overall reductions in support over time.² Thus, the competitive approach—as opposed to barriers to ETC designation by regulatory fiat—provides the best tool for sustaining the universal service fund, by identifying the most efficient, least cost provider(s) of services.³

Second, the proposal is not competitively neutral among CETCs, creating a race to designation in the middle tier, and unnecessarily limiting the options available to rural consumers. For example, if a wireless CETC has already been designated in a middle tier, then a wireline CETC is foreclosed from designation. Yet, such CETCs, typically offering substitutable services in competition with the ILEC, may provide the most effective incentives for the ILEC to reduce costs, increase efficiency, and improve offerings to consumers.⁴

Third, any presumption against CETC designations invites gaming. Incumbents, particularly those currently reporting costs that are close to the proposed per-line support cut-offs of \$20 and \$30 per line, will be incentivized to inflate or manipulate costs to cross the applicable threshold to block CETC designations. Given that ILECs have almost unfettered control over cost reporting, virtually unchecked by any oversight or audit procedures, such behavior is clearly possible.⁵

Lastly, but of no less significance, the imposition of arbitrary limitations on the number of ETCs in a market is a dubious proposition under Section 214(e)(2). While ETC designations in rural areas are permissive, the statute issues no flat prohibition—or even presumption against—ETC designations in rural areas. For these reasons, GCI submits that the detriments of

² See Dr. David E.M. Sappington, “Harnessing Competitive Forces to Foster Economic Universal Service,” CC Docket No. 96-45) (“Sappington Paper”) at 20-24 (filed Dec. 19, 2003).

³ *Id.* at 6-20 (detailing drawbacks of the “monopoly approach” to universal service).

⁴ For the reasons described in the attached, these benefits occur without any threat to carrier of last resort service. See also Sappington Paper at 38-40. As a result, the Commission’s recent inquiry as to the likelihood of a particular ETC designation to “undercut the incumbents’ ability to serve the entire study area” is misplaced. See *Federal State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as a Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion & Order*, FCC 03-238 (Jan. 23, 2004) (“*Virginia Cellular Order*”) at ¶ 34.

⁵ See, e.g., *Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers; Federal-State Joint Board on Universal Service*, Western Wireless Petition for Rulemaking to Eliminate Rate-of-Return Regulation of Incumbent Local Exchange Carriers, RM No. 10822, CC Docket No. 96-45 (filed Oct. 30, 2003).

the benchmark proposal outweigh any perceived benefits from imposing arbitrary limitations on ETC designations.⁶

As a related matter, it is important to note that properly designed disaggregation plans address any concerns that may arise in connection with the designation of multiple ETCs where high cost support is exceptionally high. The incumbent has the ability, within its sole discretion, to design disaggregation plans to target support to the highest cost locations within its study area(s).⁷ Given this discretionary and flexible opportunity, an incumbent should not then benefit from its failure to design such a plan, or to do so effectively, by receiving protection from competition in the form of barriers to ETC designations.⁸ This barrier could be raised either by the imposition of arbitrary limits on the number of ETCs in a study area or the denial of such designation based on the presumption that the new entrant will “game” support by cherry-picking consumers in lower cost areas when the incumbent has not exercised (whether effectively or at all) those protections already available to guard against this very result.

GCI recognizes the need for measures to ensure a sustainable universal service fund and has supported competitively neutral measures to achieve this result.⁹ Proposals that sharply tip the competitive balance in a manner that raise barriers to competitive entry and effectively insulate incumbents from competition, however, should not be considered. At bottom, if there are concerns that per line support may be “too high” for multiple ETCs, then the issue to be addressed is not how to bar CETC designations, but how to eliminate duplicative support and incent the delivery of more cost-effective, quality service, which, in turn, would reduce demand on the universal service fund. Indeed, competitive entry is the only suitable mechanism for identifying when per-line support is excessive and should be reduced for all carriers in the market.

In accordance with the Commission’s rules, a copy of this letter with attachment is being filed in the above-captioned proceeding.

Sincerely,

/s/

Tina M. Pidgeon
Vice President, Federal Regulatory Affairs

⁶ Even assuming the benchmarks would serve as “rebuttable presumption” does not sufficiently address the drawbacks. In GCI’s experience, the processes necessary to consider and address presumptions that protect incumbents from competition have required significant time and resources to resolve. These proceedings, in and of themselves, disadvantage competitive carriers, by delaying their entry, and consumers, by denying them access to carrier choice and related benefits.

⁷ 47 C.F.R. § 54.315.

⁸ *Virginia Cellular Order* at ¶ 35.

⁹ *See, e.g., GCI Ex Parte*, CC Docket No. 96-45 (Nov. 19, 2003).

Members of the Federal-State Joint Board

February 17, 2004

Page 4 of 4

Attachment

cc (w/attachment): *via electronic mail*

Marlene H. Dortch, Secretary

Chairman Michael Powell
Commissioner Michael Copps
Chris Libertelli
Jessica Rosenworcel
Greg Fogleman
Carl Johnson
Lori Kenyon
Joel Shifman
Peter Bluhm
Charlie Bolle
Peter A. Pescosolido
Jeff Pursley
Mary E. Newmeyer
Larry M. Stevens
David Dowds
Jennifer Gilmore
Michael Lee
Philip McClelland
Barbara Meisenheimer
Earl Poucher

Matt Brill
Daniel Gonzalez
Jason Williams
Scott Bergmann
Carol Matthey
Eric Einhorn
Sharon Webber
Diane Law Hsu
Anita Cheng
William Scher
Vickie Byrd
Bryan Clopton
Paul Garnett
Katie King
Shannon Lipp
Jennifer Schneider
Cara Voth
Geoff Waldau
Dana Walton-Bradford